European Securities and Markets Authority

EUROPEAN BANKING AUTHORITY

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Response form for the Joint Consultation Paper concerning ESG disclosures

23 April 2020

Date: 23 April 2020
ESMA 34-45-904

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Responding to this paper

The European Supervisory Authorities (ESAs) invite comments on all matters in this consultation paper on ESG disclosures under Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector (hereinafter “SFDR”) and in particular on the specific questions summarised in Section 3 of the consultation paper under “Questions to stakeholders”.

Comments are most helpful if they:

1. contain a clear rationale; and
2. describe any alternatives the ESAs should consider.

When describing alternative approaches the ESAs encourage stakeholders to consider how the approach would achieve the aims of SFDR.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

Q1 Insert your responses to the questions in the Consultation Paper in the present response form.

Q2 Please do not remove tags of the type <ESA_QUESTION_ESG_1>. Your response to each question has to be framed by the two tags corresponding to the question.

Q3 If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.

Q4 When you have drafted your response, name your response form according to the following convention: ESA_ESG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA_ESG_ABCD_RESPONSEFORM.

Q5 The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the ESMA website under the heading ‘Your input - Consultations’ by **1 September 2020**.

Q6 Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESAs Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725[1]. Further information on data protection can be found under the Legal notice section of the EBA website and under the Legal notice section of the EIOPA website and under the Legal notice section of the ESMA website.

[1] Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

General information about respondent

Name of the company / organisation	Global Reporting Initiative
Activity	Audit/Legal/Individual
Are you representing an association?	☐
Country/Region	Netherlands

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_ESG_1>
GRI helps organizations be transparent and take responsibility for their impacts to create a sustainable future. We are the global standard setter for impact reporting through an independent and multi-stakeholder process. We maintain the world's most comprehensive set of sustainability reporting standards. Available as a free public good, the GRI Standards are the most widely used for sustainability reporting worldwide. According to our latest research 168 policies in 67 countries and regions reference or require the GRI Standards (Carrots and Sticks 2020 available at https://www.carrotsandsticks.net/)

The GRI Standards and reporting framework enable companies of all types to disclose their impacts on people, economy and the environment. If not already financial material at the time of reporting, these impacts, given their importance to society, in many cases are leading indicators of issues that become material over time. The GRI Standards, with their focus on the environmental, economic and social impacts of the activities of a company, are the only sustainability reporting standards that embody the outward impact component of the double materiality principle as articulated by the European Commission 'Guidelines on reporting climate-related information.' Thousands of companies around the world regularly use the GRI Standards as the basis for reporting their ESG information.

GRI welcomes the opportunity to comment on this consultation paper. Below we focus on the questions directly related to our work as a standard setter. In our contribution to the revision of the non-financial reporting directive (NFRD) consultation earlier this year, we recommended making the new NFRD legislation the 'hub' for non-financial reporting requirements. Concrete goals and targets can be part of separate legislations and regulatory policies, all referring to the NFRD for the way to report on them (standards as a reporting language) to ensure comparability and usability of the data. GRI stands ready to share its experience and knowledge about standard setting and sustainability reporting with the European Supervisory Authorities (ESAs), in line with our offer to the European Commission regarding the revision of the NFRD.
<ESA_COMMENT_ESG_1>

- **: Do you agree with the approach proposed in Chapter II and Annex I – where the indicators in Table 1 always lead to principal adverse impacts irrespective of the value of the metrics, requiring consistent disclosure, and the indicators in Table 2 and 3 are subject to an "opt-in" regime for disclosure??**

<ESA_QUESTION_ESG_1>
GRI supports the general requirement to disclose adverse sustainability impacts. This requirement – which goes beyond the simple consideration of sustainability risks to include the sustainability impacts of investment activities – is appropriately aligned with the European Commission's approach to double materiality as well as the broader sustainable finance objectives.

In relation to the requirement to disclose the indicators set out in Table 1, we make the following observations:

- A core principle underlying GRI reporting is that the materiality determination (the assessment of the specific issues that are likely to be material to the reporting organization) resides with the organization, in consultation with its key stakeholders, rather than being prescribed by GRI. The GRI Standards provide guidance to reporting organizations around determining which issues are material and as part of the reporting process, organizations are required to disclose how they have identified their material topics. That said, we recognize the desire to achieve consistent and comparable disclosure across all reporting entities and therefore understand the rationale for "mandating" a limited number of disclosures aligned with global standards and key authoritative intergovernmental instruments.
- The topic areas covered under Annex I, Table 1 (and indeed Tables 2 and 3) are found in the GRI Standards and we therefore agree that these are issues that are likely to impact on sustainable development. We would caution, however, that relying only on metrics without additional context does not provide a comprehensive picture of the nature of the investments and the specific exposures. Thus, to have meaning the "value" of the metrics must be understood within the context of (for example) the nature of the specific investments/investment portfolio and relevant reference benchmarks/sustainability context.

<ESA_QUESTION_ESG_1>

- **: Does the approach laid out in Chapter II and Annex I, take sufficiently into account the size, nature, and scale of financial market participants activities and the type of products they make available?**

<ESA_QUESTION_ESG_2>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_2>

- **: If you do not agree with the approach in Chapter II and Annex I, is there another way to ensure sufficiently comparable disclosure against key indicators?**

<ESA_QUESTION_ESG_3>
As per our answer to Q1, the GRI Standards require reporting companies to identify for themselves which issues are material and consequently what information is reported. GRI does not wish to express a specific view on mandated baseline disclosures but understands the desire of the ESAs to ensure consistent and comparable disclosures.

The ability of financial market participants to disclose the Annex I information is dependent on this information being disclosed by their investee companies and this information similarly being disclosed in a consistent and comparable fashion. One of the ways in which to achieve this is to ensure that reporting occurs against widely adopted, internationally recognised standards, such as the GRI Standards, which additionally have the benefit of being aligned with key authoritative intergovernmental instruments for responsible business conduct. These include the UN Guiding Principles on Business and Human Rights, the ILO conventions and the OECD Guidelines for Multinational Enterprises.

While beyond the remit of the ESAs, we take this opportunity to reiterate a comment we have made previously – namely that the European Commission should strive for convergence of similar reporting requirements in various policy initiatives focused on sustainability topics (e.g. human rights due diligence). The NFRD would be the logical place to bring related reporting requirements together to ensure alignment, reduction of reporting burden and availability of relevant information.
<ESA_QUESTION_ESG_3>

- **: Do you have any views on the reporting template provided in Table 1 of Annex I?**

<ESA_QUESTION_ESG_4>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_4>

- **: Do you agree with the indicators? Would you recommend any other indicators? Do you see merit in including forward-looking indicators such as emission reduction pathways, or scope 4 emissions (saving other companies´ GHG emissions)?**

<ESA_QUESTION_ESG_5>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_5>

- **: In addition to the proposed indicators on carbon emissions in Annex I, do you see merit in also requesting a) a relative measure of carbon emissions relative to the EU 2030 climate and energy framework target and b) a relative measure of carbon emissions relative to the prevailing carbon price?**

<ESA_QUESTION_ESG_6>
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<ESA_QUESTION_ESG_6>

- **: The ESAs saw merit in requiring measurement of both (1) the share of the investments in companies without a particular issue required by the indicator and (2) the share of all companies in the investments without that issue. Do you have any feedback on this proposal?**

<ESA_QUESTION_ESG_7>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_7>

- : **Would you see merit in including more advanced indicators or metrics to allow financial market participants to capture activities by investee companies to reduce GHG emissions? If yes, how would such advanced metrics capture adverse impacts?**

<ESA_QUESTION_ESG_8>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_8>

- **: Do you agree with the goal of trying to deliver indicators for social and employee matters, respect for human rights, anti-corruption and anti-bribery matters at the same time as the environmental indicators?**

<ESA_QUESTION_ESG_9>
The GRI Standards enable organizations to provide a balanced and reasonable representation of their positive and negative contributions towards sustainable development and take responsibility for these impacts. This is enabled through a set of holistic disclosure standards that cover environmental, economic and social topic areas. We therefore support the inclusion of indicators beyond just environmental indicators. In the interests of ensuring consistency and comparability across reporting organizations and reducing the reporting burden, we encourage the ESAs to rely on reporting standards embedded in other EU regulations and widely used reporting standards, such as the GRI Standards, where possible.
<ESA_QUESTION_ESG_9>

- **: Do you agree with the proposal that financial market participants should provide a historical comparison of principal adverse impact disclosures up to ten years? If not, what timespan would you suggest?**

<ESA_QUESTION_ESG_10>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_10>

- **: Are there any ways to discourage potential “window dressing” techniques in the principal adverse impact reporting? Should the ESAs consider harmonising the methodology and timing of reporting across the reference period, e.g. on what dates the composition of investments must be taken into account? If not, what alternative would you suggest to curtail window dressing techniques?**

<ESA_QUESTION_ESG_11>
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<ESA_QUESTION_ESG_11>

- **: Do you agree with the approach to have mandatory (1) pre-contractual and (2) periodic templates for financial products?**

<ESA_QUESTION_ESG_12>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_12>

- **: If the ESAs develop such pre-contractual and periodic templates, what elements should the ESAs include and how should they be formatted?**

<ESA_QUESTION_ESG_13>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_13>

- **: If you do not agree with harmonised reporting templates for financial products, please suggest what other approach you would propose that would ensure comparability between products.**

<ESA_QUESTION_ESG_14>

TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_14>

- **: Do you agree with the balance of information between pre-contractual and website information requirements? Apart from the items listed under Questions 25 and 26, is there anything you would add or subtract from these proposals?**

<ESA_QUESTION_ESG_15>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_15>

- **: Do you think the differences between Article 8 and Article 9 products are sufficiently well captured by the proposed provisions? If not, please suggest how the disclosures could be further distinguished.**

<ESA_QUESTION_ESG_16>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_16>

- **: Do the graphical and narrative descriptions of investment proportions capture indirect investments sufficiently?**

<ESA_QUESTION_ESG_17>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_17>

- **: The draft RTS require in Article 15(2) that for Article 8 products graphical representations illustrate the proportion of investments screened against the environmental or social characteristics of the financial product. However, as characteristics can widely vary from product to product do you think using the same graphical representation for very different types of products could be misleading to end-investors? If yes, how should such graphic representation be adapted?**

<ESA_QUESTION_ESG_18>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_18>

- **: Do you agree with always disclosing exposure to solid fossil-fuel sectors? Are there other sectors that should be captured in such a way, such as nuclear energy?**

<ESA_QUESTION_ESG_19>
TYPE YOUR TEXT HERE
<ESA_QUESTION_ESG_19>

- **: Do the product disclosure rules take sufficient account of the differences between products, such as multi-option products or portfolio management products?**

<ESA_QUESTION_ESG_20>
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<ESA_QUESTION_ESG_20>

- **: While Article 8 SFDR suggests investee companies should have “good governance practices”, Article 2(17) SFDR includes specific details for good governance practices for sustainable investment investee companies including “sound management structures, employee relations, remuneration of staff and tax compliance”. Should the requirements in the RTS for good governance practices for Article 8 products also capture these elements, bearing in mind Article 8 products may not be undertaking sustainable investments?**

<ESA_QUESTION_ESG_21>
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<ESA_QUESTION_ESG_21>

- **: What are your views on the preliminary proposals on “do not significantly harm” principle disclosures in line with the new empowerment under the taxonomy regulation, which can be found in Recital (33), Articles 16(2), 25, 34(3), 35(3), 38 and 45 in the draft RTS?**

<ESA_QUESTION_ESG_22>
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<ESA_QUESTION_ESG_22>

- **: Do you see merit in the ESAs defining widely used ESG investment strategies (such as best-in-class, best-in-universe, exclusions, etc.) and giving financial market participants an opportunity to disclose the use of such strategies, where relevant? If yes, how would you define such widely used strategies?**

<ESA_QUESTION_ESG_23>
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<ESA_QUESTION_ESG_23>

- **: Do you agree with the approach on the disclosure of financial products’ top investments in periodic disclosures as currently set out in Articles 39 and 46 of the draft RTS?**

<ESA_QUESTION_ESG_24>
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<ESA_QUESTION_ESG_24>

- **: For each of the following four elements, please indicate whether you believe it is better to include the item in the pre-contractual or the website disclosures for financial products? Please explain your reasoning.**

1. an indication of any commitment of a minimum reduction rate of the investments (sometimes referred to as the "investable universe") considered prior to the application of the investment strategy - in the draft RTS below it is in the pre-contractual disclosure Articles 17(b) and 26(b);

2. a short description of the policy to assess good governance practices of the investee companies - in the draft RTS below it is in pre-contractual disclosure Articles 17(c) and 26(c);

3. a description of the limitations to (1) methodologies and (2) data sources and how such limitations do not affect the attainment of any environmental or social characteristics or sustainable investment objective of the financial product - in the draft RTS below it is in the website disclosure under Article 34(1)(k) and Article 35(1)(k); and

4. a reference to whether data sources are external or internal and in what proportions - not currently reflected in the draft RTS but could complement the pre-contractual disclosures under Article 17.

<ESA_QUESTION_ESG_25>
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<ESA_QUESTION_ESG_25>

- **: Is it better to include a separate section on information on how the use of derivatives meets each of the environmental or social characteristics or sustainable investment objectives promoted by the financial product, as in the below draft RTS under Article 19 and article 28, or would it be better to integrate this section with the graphical and narrative explanation of the investment proportions under Article 15(2) and 24(2)?**

<ESA_QUESTION_ESG_26>
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<ESA_QUESTION_ESG_26>

- **: Do you have any views regarding the preliminary impact assessments? Can you provide more granular examples of costs associated with the policy options?**

<ESA_QUESTION_ESG_27>
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<ESA_QUESTION_ESG_27>